

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL O'GRADY,

Plaintiff,

v.

TERESA L. CARLSON, JAMES L. SANTELLE,
JANE KOHLWEY, SCOTT CORBETT,
JAMES ROY HABECK. SUSAN PFEIFFER,
KRISTINE RANDAL and
MARATHON COUNTY CHILD
SUPPORT/TITLE IV-D AGENCY,

Defendants.

ORDER

12-cv-388-bbc

Defendants Teresa L. Carlson and James L. Santelle removed this case from the Circuit Court for Columbia County, Wisconsin under 28 U.S.C. § 1442(a)(1), which authorizes removal of a case filed against federal officers "relating to any act under color of such office." A limitation of the statute is that the officer must show that he has a federal defense to the plaintiff's claims against him. Mesa v. California, 489 U.S. 121, 129 (1989).

In this case, plaintiff Michael O'Grady alleges that defendant Santelle (an assistant United States attorney) and defendant Carlson (an agent of the Federal Bureau of Investigation) failed in their duty to prevent defendant James Habeck "from retaliating and inflicting injury upon Plaintiff for exercising [his] right in federal and state court to enforce his court order rights." Cpt. ¶ 31, dkt. #1-2. Although many of plaintiff's allegations are

difficult to understand, his claim against the two federal officers seems to be that their offices imposed on them a duty to protect him from the allegedly erroneous rulings of a state court judge, defendant Habeck. That claim is obviously frivolous, but that does not necessarily mean it was properly removed. A potential problem with the notice of removal is that Santelle and Carlson do not identify a federal defense to plaintiff's claim against them. Accordingly, I will give those two defendants an opportunity to file a supplemental notice in which they explain why they believe they satisfy the requirements of § 1442(a)(1) or another removal provision.

ORDER

IT IS ORDERED that defendants Teresa L. Carlson and James L. Santelle may have until October 17, 2012, to show cause why this case should not be remanded to state court for lack of subject matter jurisdiction.

Entered this 10th day of October, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge